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SUBJECT: BOLIVIA: NEW LAWS INSTITUTIONALIZE MORALES' CHANGE PROJECT

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¶1. (C) Summary: The GOB is preparing several pieces of legislation to implement the country's new constitution. Judiciary-related laws will "re-found" the country's electoral, supreme, and constitutional courts, and will also define how the now co-equal indigenous and "ordinary" justice systems will work together. An autonomies law will outline a framework for power-sharing among the central, state, regional, local, and indigenous levels of government. The GOB is also preparing a law to codify the role of social groups as government "overseers." With Morales' ruling Movement Toward Socialism party (MAS) now in firm control of both houses in the Plurinational Assembly (Congress), the GOB is also reviving three pieces of previously-blocked legislation, including a universal health care law, an educational reform law, and an anti-corruption law. As written, the pending legislation appears to reward the MAS political base while enabling Morales to keep firm control of the levers of power. End summary.

#### Five Constitutionally Required Laws

¶2. (U) Bolivia's new constitution contains a July 22 deadline to pass five implementing laws, although the Morales administration has indicated they hope to pass all five more quickly. These include: 1) the Plurinational Electoral Organ Law to codify the roles and responsibilities of the successor to the National Electoral Court; 2) the Judicial Organ Law to codify the roles and responsibilities of the Supreme Tribunal of Justice, the successor to the Supreme Court; 3) the Plurinational Constitutional Tribunal Law, to codify the roles and responsibilities of the successor to the Constitutional Tribunal; 4) the Electoral Regimen Law to define the fundamental rules for all elections and replace the current Electoral Transition Law; and 5) the Framework Law for Autonomies and Decentralization to clarify the roles and responsibilities of country's five autonomy levels - central, departmental (state), regional, municipal, and indigenous.

13. (SBU) The first four laws are not expected to create judicial bodies markedly different from those that exist now. The main difference, as outlined in the constitution, is that the Plurinational Assembly will elect six of the seven members of the Supreme Electoral Tribunal (the president selects the seventh) and will nominate all candidates for election to the Supreme Tribunal of Justice and the Plurinational Constitutional Tribunal (who will then be popularly elected). With two-thirds control of the Plurinational Assembly, President Morales and the MAS will be able to essentially hand pick the entire cast of the new judiciary.

#### Framework Law for Autonomies and Decentralization

14. (C) Of the five laws, the Framework Law for Autonomies and Decentralization is considered the most contentious -- and the most far-reaching. The law will specify to what extent each of the government's five autonomy levels will control natural resource use, regulate investments and businesses operations, and collect taxes. Experts report that, in its draft form, the law does not sufficiently clarify which levels of government will be assigned which functions. Instead, the law grants the departmental, municipal, and indigenous levels of government roughly co-equal and often overlapping status. Our contacts say the law is likely to lead to conflicting or duplicative regulations (including taxes) among the three levels of government. They say the new Plurinational Constitutional Tribunal will most likely have to

clarify the limits of each level of autonomy through judicial decisions. Until then, the sometimes vague and/or overlapping authority granted in the law will likely discourage local and foreign investment.

15. (C) The drafters of the Framework Law for Autonomies and Decentralization will be limited by articles in the new constitution that grant indigenous areas explicit regulatory and taxation powers. Article 304 directs that within indigenous autonomous areas (IAAs), indigenous groups shall have the right to manage and administer renewable natural resources and to levy taxes, assessments, and "special contributions" -- a role that might normally fall to the departments. If such authority is instead devolved to the much smaller indigenous level of autonomy, the possibility exists that each indigenous area could make its own regulations, creating a regulatory thicket in which natural resource-oriented businesses would have to maneuver.

#### Creating Two Justice Systems: The Jurisdictional Demarcation Law

16. (U) In addition to the five constitutionally-required laws, the pending Law of Jurisdictional Demarcation is expected to be announced soon and to have a significant impact. The law is designed to clarify which lands will become IAAs and -- more importantly -- define the relationship between the "ordinary" justice system and the variety of indigenous justice systems to be employed in the IAAs.

17. (C) After reviewing a recent draft of the jurisdiction bill, constitutional lawyer Carlos Alarcon told us that the law creates two competing (and often overlapping) systems of justice that will often be in conflict. Alarcon said that, perhaps in a desire to evade a hierarchal relationship between the two systems, the law as written leaves unclear which system will govern a given situation. The indigenous justice systems are to apply in all IAAs and to all indigenous persons, regardless of their location. Under this definition, he said, he would expect to see instances in which persons charged with crimes under the ordinary justice system would seek to avoid punishment by identifying themselves as members of an

indigenous group with a more lenient (or non-existent) punishment for the same crime. Since in Bolivia indigenous status is largely self-defined, people could easily "game" the two systems.

¶8. (C) Alternatively, said Alarcon, a non-indigenous person who commits a minor crime in an indigenous area could find local custom calls for a more severe penalty than the ordinary justice system (e.g. hitting an animal deemed sacred to the local population with one's car). Alarcon noted that since most indigenous justice systems are not codified, a person could easily be unaware of committing a criminal act.

¶9. (C) In a third situation, Alarcon noted that since each indigenous area will apply its own customs and norms, there could be legal confusion if an indigenous person belonging to one area is charged with a crime in another area. He said the law as written does not contemplate this possibility, and that it was likely the Plurinational Constitutional Tribunal would have to rule on such issues. Alarcon also questioned whether investigators from the ordinary justice system would be allowed to enter into IAAs, or if investigators from one IAA could enter another. He concluded by saying that balkanizing Bolivia's legal system ran the risk of

creating a chaotic, unworkable system.

#### Law of Social Control

¶10. (SBU) The GOB is said to be readying a Law of Social Control to define the role of the social movements in "overseeing" government actions. President Morales and Vice President Garcia Linera have repeatedly promised in recent public appearances, including their inauguration speeches, that the social movements would be "their chiefs." The constitution, in Articles 241 and 242, states that social movements will participate in designing public policy, support the legislature in passing legislation, manage public and private businesses that administer public resources, guarantee transparency at all levels of government, and report on the government's effectiveness. Neither we nor our contacts have yet seen drafts of this law.

#### Other Pending Legislation - Education Reform, Health Care, and Anti-Corruption

¶11. (SBU) With the MAS now firmly in control of both houses in the Plurinational Assembly, the Morales administration also has revived three previously-blocked bills. All are deeply opposed by the opposition, but the Morales administration has signaled they will move quickly to pass them. The first, the Avelino SiClani Education Law, is designed to re-orient school curricula by de-emphasizing "colonial" versions of history and strengthening bilingual education (i.e. Spanish and indigenous languages such as Aymara, Quechua, Guarani, etc.). The second bill would establish a national, centralized health care service to be funded through hydrocarbon-related tax income. Last, the Marcelo Quiroga Santa Cruz Anti-Corruption Law would give prosecutors investigating suspected acts of corruption the authority to access private bank account information. Such legislation is long overdue, but opposition groups fear this authority will be misused and will lead to "witch hunts" by the central government.

#### Comment

¶12. (C) In his inauguration speech, Vice President Garcia Linera promised new laws to decentralize power "but with the State in every centimeter to ensure power is distributed democratically." This pledge captures the challenge facing the GOB in rewarding social and indigenous groups while maintaining firm control throughout the country. The Morales' government's ability to use judicial reform to gain political control of the judiciary is troubling, but of equal concern is the potential chaos the pending reforms could bring. We are working with UNHCR and interested countries to review the potential impact of these laws on human rights and broader rule-of-law issues, as well as the overall restructuring of the judicial branch.

Creamer